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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/656,714	09/04/2003	Doyle W. Eakin	RAR471.01	8261
7590	05/03/2005			EXAMINER VALENTI, ANDREA M
RICHARD A. RYAN, ATTORNEY AT LAW 8497 N. MILLBROOK AVENUE, SUITE 110 FRESNO, CA 93720			ART UNIT 3643	PAPER NUMBER

DATE MAILED: 05/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/656,714	EAKIN, DOYLE W.
	<b>Examiner</b>	<b>Art Unit</b>
	Andrea M. Valenti	3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 28 January 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1 and 3-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1 and 3-21 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 04 September 2003 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_

## DETAILED ACTION

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "concave" bottom claimed in claims 9, 10, and 18 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

Claims 1, 13, and 18 are objected to because of the following informalities:

Claim 1, line 12, "said base member near the intersection" should be –said base member at the intersection--. The term "near" is broad and can merely be interpreted as close to, or in the proximity of, or in the neighborhood of. Which could read on an orifice similar that of U.S. Patent No. 1,428,487 #13. The orifice of Loudon is "near" the intersection, but it is not "at" the intersection.

Similar correction should be made in claims 13 and 18.

Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 7-11, 13, 16, 18, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 1,631,802 to Evert in view of U.S. Patent No. 6,047,499 to Staas.

Regarding Claim 1, Evert teaches a drainage tray comprising a base member having a bottom (Evert #5) with one or more side walls (Evert #4) extending generally vertically upward from the bottom, the bottom and the one or more side walls forming a reservoir in the base member, the reservoir having a generally open top portion, the bottom of the base member having an upwardly facing surface and a downwardly facing surface, the upwardly facing surface configured to facilitate flow of the fluids in the reservoir toward at least one of the on or more side walls (Evert #6); a drainage orifice

(Evert #9) in the base member near the intersection of the bottom and the at least one of the one or more side walls, the drainage orifice having an inlet disposed in the reservoir and an outlet disposed outside of the reservoir (Evert #8).

Evert is silent on a tubular member connected to the drainage orifice to receive the fluids from the reservoir through the outlet of the drainage orifice. However, Staas teaches a tubular member connected to a drainage orifice (Staas Fig. 2 #42). It would have been obvious to one of ordinary skill in the art to modify the teachings of Evert with the teachings of Staas at the time of the invention for the advantage of providing controlled discharge of water to direct the discharge to a desired location or to collect the water for recycling purposes.

Regarding Claim 7, Evert as modified teaches that wherein said drainage orifice is integral with (Evert #9).

Regarding Claim 8, Evert as modified teaches that the drainage orifice is disposed in the at least one of the one or more sidewalls of the base member to drain the fluids from the reservoir (Evert Fig. 1 #9 and 4).

Regarding Claims 9, 10, 18, and 20, Evert as modified teaches that the upwardly facing surface is generally concave such that the center of the bottom is higher than the intersection of the bottom and the side wall (Evert Fig. 1 #5) an a stabilizer (Evert #7).

Regarding Claims 11, 13, and 16, Evert as modified teaches the downwardly facing surface of the bottom comprises one or more stabilizer members (Evert #7) extending generally downwardly from the bottom, the one or more stabilizer members sized and configured to generally support the bottom so as to facilitate flow of fluids in

the reservoir to at least one of the one or more side walls; and inherently an upper marginal surface on one or more of the sidewalls configured to support a plant pot thereon (Evert Fig. 1 top wider extended portion of #4; the term "configured" merely indicates that the device is "capable" of performing that function and depending on the size of the selected plant pot, if it is larger than the opening into element #3 it would inherently function as a stacked support).

Claims 3-6, 14, 15, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 1,631,802 to Evert in view of U.S. Patent No. 6,047,499 to Staas as applied to claims 1, 11, 13, and 18 above, and further in view of U.S. Patent No. 117,766 to Gibson.

Regarding Claims 3, 14, and 19, Evert as modified by Staas teaches it is known to place supports on the upper surface of the bottom, but is silent on said upwardly facing surface of said bottom (a bottom configured to facilitate drainage flow) has one or more upper supports extending generally upwardly from said bottom to support the plant pot a spaced distance above said bottom of said base member. However, Gibson teaches a bottom configured to facilitate drainage flow with upper supports extending upwardly from the bottom to support a plant pot a spaced distance above the bottom of the base member (Gibson Fig. 3 #3 and Col. 1 line 11-13). It would have been obvious to one of ordinary skill in the art to further modify the teachings of Evert with the teachings of Gibson for the advantage of being able to support an internal receptacle as taught by Gibson and to create a visual/aesthetic effect.

Regarding Claim 4, Evert as modified teaches said one or more upper supports comprises a plurality of ribs in spaced apart relation (Gibson Fig. 3 #3).

Regarding Claims 5 and 15, Evert as modified teaches said ribs are generally inclined downward toward the center of said bottom (Gibson Fig. 3 #3 the ribs have inclined sides).

Regarding Claim 6, Evert as modified teaches said one or more upper supports are sized and configured to substantially allow flow of the fluids in said reservoir to said drainage orifice (Gibson Col. 2 line 13-15).

Claims 12, 17, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 1,631,802 to Evert in view of U.S. Patent No. 6,047,499 to Staas as applied to claims 1, 11, 13, and 18 above, and further in view of U.S. Patent No. U.S. Patent No. 2,989,205 to Yaws.

Regarding Claims 12, 17, and 21, Evert as modified teaches an outer stabilizer member (Evert #7) in a circular pattern, but is silent on said one or more stabilizer members comprise at least an inner stabilizer member and an outer stabilizer member, each of said inner stabilizer member and said outer stabilizer member configured in a generally circular pattern, said inner stabilizer member disposed generally inwardly of said outer stabilizer member, said inner stabilizer member configured to generally support the center of said bottom higher than the periphery of said bottom. However, Yaws teaches circular inner and outer stabilizer members of a tray for support (Yaws Fig. 3 and Fig. 2 #30 and 22 and Col. 2 line 5-6). It would have been obvious to one of

ordinary skill in the art to further modify the teachings of Evert with the teachings of Yaws at the time of the invention with inner stabilizer members of a length that extends from the bottom of the downwardly facing surface to the surface the device is placed on for the advantage of providing support as taught by Yaws to provide a strong and stable structure.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1 and 3-21 have been considered but are moot in view of the new ground(s) of rejection.

Applicant has not positively claimed the combination of a drainage tray and a plant pot. Applicant has claimed the drainage tray, but has not claimed the plant pot. Merely providing "for use" language is not a positive recitation of a structural limitation to the claim. Therefore, Evert teaches a receptacle and the receptacle has the capability of functioning as a drainage tray. Furthermore, it is old and notoriously well-known to place one container inside of another container, as taught by U.S. Patent No. 5,044,119 to Hougard and U.S. Patent No. 603,492 to Waterer.

Applicant has claimed that the bottom is "Concave", but in reality the bottom protrudes "convexly" into the interior of the receptacle. For clarity, perhaps the bottom is better described as being "convex".

Examiner maintains that applicant has not patentably distinguished over the teachings of the cited prior art.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: U.S. Patent No. 5,044,119.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 571-272-6895. The examiner can normally be reached on 7:00am-5:30pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Andrea M. Valenti  
Patent Examiner  
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26 April 2005



Peter M. Poon  
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4/28/05